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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,068	02/19/2002	Patricia Lewis	MOR3334P0870US	6339

7590 08/21/2003

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EXAMINER

PATTERSON, MARIE D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 08/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

OS

Office Action Summary	Application No.	Applicant(s)
	10/078,068	LEWIS ET AL.
	Examiner	Art Unit
	Marie Patterson	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 2-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

Claim Rejections - 35 USC § 112

1. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 appears to recite the same structural limitations of claim 3 rendering claim 4 vague and indefinite as to what further structural limitations applicant intends to encompass with such language.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Jarrett (1748607).

Jarrett shows a one piece boot with an ankle and foot portion and a toe part folded towards the heel and fastening means (the wire member 4, see lines 90-93) as claimed.

4. Claims 2-7 are rejected under 35 U.S.C. 102(b) as being anticipated by either Saraceni (3337770) or Cockrell (2630636).

Either Saraceni or Cockrell shows a boot formed from one piece of material with foot and ankle portions and a fastening means (26 or 24 and 25) which removably and adjustably fastens the foot-covering portions onto itself at a

plurality of positions (depending on how far up the toe portions are folded) as claimed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saraceni, Cockrell, or Jarrett in view of Rousseau (4599811).

Saraceni, Cockrell, or Jarrett shows a boot substantially as claimed (as described above) except for the exact fastening means. Rousseau teaches the use of hook and loop fasteners (6-8, 12, and 13) and a strap (11) for the fastening means in a boot with foldable portions. It would have been obvious to use hook and loop fasteners and strap as taught by Rousseau in the boot of either Saraceni, Cockrell, or Jarrett to make the fastening means easy and quick to use and secure and durable.

7. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 2-8 above, and further in view of Sinclair (4458431) and Boggs (4788780) or Cockrell (2630636).

Saraceni, Cockrell, or Jarrett as modified above shows a boot substantially as claimed except for the strap being fastened to itself and providing a strap on the foot portion. Sinclair teaches providing straps which are both fastened to the boot and fastened to itself. Boggs or Cockrell teaches providing two straps, on

the ankle portion (55 or 24) and one on the foot portion (53 or 25). It would have been obvious to provide two straps as taught by either Boggs or Cockrell and to use a multi-fastenable strap as taught by Sinclair in the boot of Saraceni, Cockrell, or Jarrett as modified above to provide more secure fastening means and to provide greater adjustability.

Response to Arguments

8. Applicant's arguments filed 7/25/03 have been fully considered but they are not persuasive. Applicants' arguments filed 7/25/03 are moot in view of the new ground of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302. (Note that the Examiner **cannot** confirm receipt of

faxes) Please identify Examiner____ of Art Unit ____ at the top of your cover sheet of any correspondence submitted.

Inquiries only concerning the **merits** of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to (703) 308-1337.

Check out our web-site at "www.uspto.gov" for fees and other useful information.



Marie Patterson
Primary Examiner
Art Unit 3728